365. The New York rule is followed in some other states. *Koontz v. Ins. Co.*, 42 Mo. 126; *Ins. Co. v. Shreck*, 27 Neb. 527. There is a conflict as to what contracts are severable. Early cases, and the N. Y. cases allow severability where the policy is on separate and distinct classes of property, each of which is separately valued, although the premium is paid in gross. Later cases do not seem to follow that rule, but regard the policy as severable where the property is so situated that the risk on each item is separate and distinct, that on one item not affecting the risk on the others. *Phenix Ins. Co. v. Pickel*, 119 Ind. 155; *Loomis v. Ins. Co.*, 77 Wis. 87.

MASTER AND SERVANT—VICE PRINCIPAL.—VOGEL V. AMERICAN BRIDGE CO., 73 N. E. 1 (N. Y.).—*Held*, that where a master put a supposedly competent foreman in charge, with a sufficient supply of strong ropes for the work, and a workman was injured by the breaking of an old rope which the foreman had ordered him to use over his own protest that it was not sufficently strong, the master was not liable. Cullen C. J., Bartlett and Vann, JJ., *dissenting*.

As to who is vice principal, there are two tests: the superior officer test which prevails in Ohio and most of the states west thereof, and the non-assignable duty test which is more prevalent in the east. *Huffcutt, Agency*, 338 to 314, and cases there cited. Yet the law as to the dividing line between fellow servant and vice principal is by no means clear, as is shown by the number of decisions on this point made by divided courts. *N. P. Ry. Co. v. Peterson*, 162 U. S. 346; *Murray v. S. C. Ry. Co.*, 1 McMull. 385. Especially is this true in N. Y. *Perry v. Rogers*, 157 N. Y. 251; *Malone v. Hathaway*, 64 N. Y. 5. As a general rule, those doing the work of a servant are fellow servants, whatever their grade of service; and a servant, of whatever rank, charged with the performance of the master's duty toward his servants, is, as to the discharge of that duty, a vice principal. *Jacques v. Great Falls Mfg. Co.*, 66 N.H. 482; *Moynihan v. Hills Co.*, 146 Mass. 586. As to the rule in the Federal Courts, see 14 *Yale Law Journal* 343.

NEGLIGENCE—ICE ON SIDEWALK—LIABILITY OF LANDLORD.—CITY OF NEW CASTLE V. KURTZ, 59 ATL. 989 (PA.).—*Held*, that owners of property in the possession of a tenant with properly constructed pavements in good repair, are not liable for an injury caused by a sudden accumulation of ice thereon. Metrezat and Potter, JJ., *dissenting*.

The landlord's liabilities in respect of possession are, in general, suspended as soon as the tenant takes possession, *Cheetham v. Hampson*, 4 T. R. 318; *Mayor v. Corlies*, 2 Sandf. 301; unless he has undertaken to keep the premises in repair and the injury is occasioned by his neglect so to do. *Leslie v. Pounds*, 4 Taunt. 649. Where premises are leased with a nuisance existing on them at the time, the landlord is liable. *Irvine v. Wood*, 51 N. Y. 224; *House v. Metcatf*, 27 Conn. 631. But the landlord is not liable for a new nuisance created by the tenant during his term, *Fish v. Dodge*, 4 Denio 311; *Rich v. Basterfield*, 4 C. B. 805; but if the landlord renews the lease, knowing of the existence of the nuisance, he becomes liable. *People v. Townsend*, 3 Hill 479; *Vedder v. Vedder*, 1 Denio 257.

PUBLIC OFFICERS—QUORUM OF A BOARD—NOTICE TO ABSENT MEMBER.—AKLEY V. PERRIN, 79 PAC. 192 (IDAHO.).—*Held*, that a meeting of a board of public officers can be lawfully held by a majority of the board without giving

notice to a member who is at the time of calling and holding the meeting beyond the borders of the state. Stockslager, C. J., *dissenting*.

The decision in the present case is based on a chain of inferences and analogies drawn from a state statute. The general rule is to the contrary. Although an authority given to several for public purposes may be executed by a majority of their number, *Cooley v. O'Connor*, 12 Wall. 391; yet the action of a majority cannot be upheld when the minority took no part in the transaction, was ignorant of what was done, and gave no implied consent to the action of the others. *Schenck v. Peay*, Woolw. (U. S.) 175. All must be present to hear and consult, though a majority may decide. *People v. Coghill*, 47 Cal. 361. But if all have due notice of the time and place of meeting, it is no objection to the validity of the action taken that not all the members attend if there is a quorum. *Wilson v. Watersville School Dist.*, 46 Conn. 400; *Gildersleeve v. Board of Education*, 17 Abb. Pr. (N. Y.) 201.

RAILROADS—FIRES—NEGLIGENCE.—NORFOLK & W. R. Co. v. FRITTS, 49 S. E. 971 (VA.).—*Held*, that where it is shown that a fire was set by a locomotive, the railroad company is presumptively guilty of negligence.

Escape of fire from a locomotive raises the presumption of negligence against the company. *R. R. Co., v. Quaintance*, 58 Ill. 389; *Tanner v. N. Y. R. Co.*, 108 N. Y. 623. *Contra, Gandy v. R. R. Co.*, 30 Ia. 420; *R. R. Co. v. Paramore*, 31 Ind. 143. To rebut this presumption it is necessary to show that the locomotive was provided with the best and most approved appliances which were properly and carefully managed. *R. R. Co. v. Funk*, 85 Ill. 460; *Missouri Pac. R. Co. v. Texas R. Co.*, 41 Fed. 917. The railway company is called upon to use only "reasonable care, skill and diligence." *Burroughs v. Housatonic R. Co.*, 15 Conn. 124; *Eddy v. Lafayette*, 49 Fed. 807. Failure to employ the best appliances in known use is want of ordinary care and prudence. *R R. Co. v. Peninsular Land Co.*, 27 Fla. 1; *Smith v. Old Colony R. Co.*, 10 R. I. 22. Frequent setting out of fires raises presumption of negligence. *R. R. v. Kincaid*, 29 Kan. 654. The highest and clearest evidence is not required to rebut the presumption of negligence raised by escape of fire. *Spaulding v. R. R. Co.*, 30 Wis. 110.

REAL PROPERTY—RAILROAD RIGHT OF WAY—ADVERSE POSSESSION.—NORTHERN PACIFIC R. CO. v. ELY, 25 SUP. CT. 302.—*Held*, that a private person cannot obtain title to a railroad right of way by adverse possession. Harlan, J., *dissenting*.

This decision follows the case of *North. Pac. R. Co. v. Townsend*, 190 U. S. 267, and must now be considered as the federal rule. A similar rule was laid down in *South. Pac. R. Co. v. Hyatt*, 132 Cal. 240, and *Collett v. Board of Comm'rs.*, 119 Ind. 27. With these two exceptions, however, it is practically universally held, both in this country and in England, that title may be acquired by adverse possession to railroad property devoted to public use. *Ill. Cent. R. Co. v. Wakefield*, 173 Ill. 564; *Mathews v. Lake Shore R. Co.*, 110 Mich. 170; *Babbett v. Southeastern R. Co.*, L. R. 9 Q. B. 424. The objection to this rule has been stated to be that corporations cannot alien property devoted to public use. But, since adverse possession gives title to land without a presumption of a grant, power to alien would seem not to be essential. *Pittsburg, etc., R. Co. v. Stickley*, 155 Ind. 312.